

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re

MONICA GENE SMITH,

Debtor.

No. 03-23722
Chapter 7

PHILIP ARCHER,

Plaintiff,

vs.

MONICA GENE SMITH,

Defendant.

Adv. Pro. No. 04-2008

M E M O R A N D U M

APPEARANCES:

MICHAEL D. KELLUM, ESQ.
1114 Sunset Drive, Suite 1
Johnson City, Tennessee 37604
Attorney for Philip Archer

MICHAEL E. LARGE, ESQ.
511 Alabama Street
Bristol, Tennessee 37620
Attorney for Monica Gene Smith

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

This adversary proceeding is before the court on defendant Monica Smith's motion requesting that plaintiff Philip Archer's complaint be dismissed because it was not filed within the time required by Fed. R. Bankr. P. 4007(c). For the following reasons, the complaint will be dismissed as untimely. This is a core proceeding. See 28 U.S.C. § 157(b)(2)(I).

Upon the filing of Ms. Smith's chapter 7 bankruptcy petition on October 20, 2003, the clerk issued a notice to parties in interest in accordance with Fed. R. Bankr. P. 4007(c) advising that January 20, 2004, was the deadline to file complaints to determine dischargeability of certain debts. On January 20, 2004, Mr. Archer filed in the debtor's bankruptcy case a document entitled "Complaint Objecting to Discharge of Claim" which asserted that a "hold harmless" debt provision in the parties' divorce property settlement agreement was nondischargeable pursuant to 11 U.S.C. § 523(a)(15).

A nondischargeability action is an adversary proceeding which must be commenced as such by the filing of a properly captioned complaint. See Fed. R. Bankr. P. 4007(a), 7001(6) and Official Form 16D. Because Mr. Archer failed to commence his § 523(a)(15) nondischargeability action as an adversary proceeding by the January 20, 2004 deadline, the court entered an order allowing him a twenty-day extension of the deadline in which to properly commence his action. In addition, Mr. Archer was directed within that time to pay the \$150 filing fee

required by 28 U.S.C. § 1930, and file a cover sheet and tender a summons for issuance by the clerk as required by E.D. Tenn. LBR 7003-1 and 7004-2. That order further provided that:

If a properly captioned complaint is filed within that twenty day period and the requisite filing fee is paid, the clerk shall docket that complaint as received on January 20, 2004, the date the document was received. If a properly captioned complaint is not filed within this time and the filing fee is not paid, the document will be stricken.

The twenty-day deadline extension passed without Mr. Archer commencing an adversary proceeding to determine dischargeability. In fact, it was not until February 25, 2004, that Mr. Archer filed his complaint commencing this adversary proceeding and paid the requisite filing fee. As a result, the complaint was not docketed as of January 20, 2004, and Ms. Smith has now moved the court to dismiss it as being untimely. No response to the motion has been filed by Mr. Archer within the time required by E.D. Tenn. LBR 7007-1. That local rule also states that the "failure to respond shall be construed by the court to mean that the respondent does not oppose the relief requested by the motion."

Fed. R. Bankr. P. 4007(c) provides in part that "[a] complaint to determine the dischargeability of a debt under § 523(c) shall be filed not later than 60 days after the first date set for the meeting of creditors under § 341(a)." Section 523(c) of the Bankruptcy Code includes nondischargeability determinations brought pursuant to 11 U.S.C. § 523(a)(15) such as this one. Therefore, there can be no

question that, but for any extension, Mr. Archer was required to have commenced this action by the deadline of January 20, 2004. The court, *sua sponte*, granted Mr. Archer an extension by order entered January 23, 2004, and yet he took no steps within that time to properly commence this action. Moreover, he has not come forward in response to the motion to offer any explanation for his inaction during that extension or otherwise why he waited until February 25, 2004, in which to file the complaint commencing this action. Accordingly, the motion to dismiss will be granted. An order to this effect will be entered contemporaneously with the filing of this memorandum opinion.

FILED: May 11, 2004

BY THE COURT

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE